

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. _____

UNITED STATES OF AMERICA, APPELLANT

PROVIDENT NATIONAL BANK, CENTRAL PENN NATIONAL
BANK OF PHILADELPHIA, AND WILLIAM B. CAMP,
ACTING COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the district court (App. A, *infra*,
pp. 9-25) are not yet reported.

JURISDICTION

The judgment of the district court dismissing the
government's complaint (App. A, *infra*, p. 14) was
entered on December 29, 1966. The United States
filed a notice of appeal to this Court on January 10,
1967. The jurisdiction of this Court rests on Sec-
tion 2 of the Expediting Act of February 11, 1903,
32 Stat. 823, as amended, 15 U.S.C. 29. *United*

States v. Continental Can Co., 378 U.S. 441; *United States v. duPont & Co.*, 353 U.S. 586.

QUESTION PRESENTED

Whether the Bank Merger Act of 1966 requires the government in an antitrust suit challenging a bank merger to establish not only that the merger may substantially lessen competition but also that its anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.¹

STATUTES INVOLVED

The pertinent portions of the Clayton Act and of the Bank Merger Act of 1966 are printed in App. B, *infra*, pp. 26-27.

STATEMENT

The Bank Merger Act of 1966 (App. B, *infra*, p. 26), amending 12 U.S.C. 1828(c), provides in relevant part that a federal banking agency "shall not approve [a proposed bank merger] whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the

¹ When the district court dismissed the complaint, it also dissolved the automatic stay of the effectiveness of the Comptroller's approval provided by the 1966 Bank Merger Act. If probable jurisdiction is noted, we reserve the right to argue that the district court erred in so doing.

community to be served"; if the agency approves the merger, "[a]ny action brought under the antitrust laws" to challenge it must be commenced within thirty days; in any such action "the court shall review de novo the issues presented" and "the standards applied by the court shall be identical with those that the banking agencies are directed to apply." The Act became effective on February 21, 1966.

On or about November 10, 1965, the boards of directors of the Provident National Bank and the Central Penn National Bank of Philadelphia approved an agreement to merge the two banks. On December 6, 1965, the banks applied to the Comptroller of the Currency for approval of the proposed transaction, as required by 12 U.S.C. 1828(c). Pursuant to that statute, the Board of Governors of the Federal Reserve System and the Department of Justice, on January 7, 1966, submitted reports to the Comptroller on the competitive factors involved in the proposed merger. (App. A, *infra*, p. 18.) The Board of Governors concluded that "the overall effect of the proposed merger on competition would be significantly adverse." The Attorney General concluded: "There are strong reasons * * * for believing that the proposed merger would have an important adverse effect on competition within the Philadelphia banking market * * * the anticompetitive effects of this merger are important and considerable and there are likely to be no redeeming features." Despite these reports, the Comptroller of the Currency approved the merger on March 4, 1966, under the standards of the recently approved Bank Merger Act of 1966, and, on March 31, 1966,

filed an opinion giving his reasons for approval. The opinion states (App. C, *infra*, pp. 31)

that this merger, rather than having an overall adverse effect on competition, will have a favorable effect. Further, the increased ability of the resulting bank to serve the convenience and needs of the Philadelphia area by increased efficiency, by a greater lending capacity, through more adequate banking quarters, and by a generally improved quality of banking service makes this merger desirable. * * *

The opinion concludes that the merger "clearly conforms to the statutory criteria and is in the public interest."

On April 1, 1966, the Department of Justice filed a complaint (App. D, *infra*, pp. —) in the district court charging that the proposed merger might substantially lessen competition, in violation of Section 7 of the Clayton Act. The complaint alleged the following facts: Provident is the fifth largest commercial bank in the four-county Philadelphia area,* accounting for 9 percent of all commercial bank deposits in the area. Central Penn is the sixth largest, accounting for approximately 5 percent. Commercial banking in this area is already heavily concentrated—the five largest banks account for some 71 percent of all commercial deposits and 74 percent of all loans of the 37 banks located in the area—and this heavy concentration is in large part a direct result of past consolidations. The merger of Provident and Central Penn would increase concentration among the five largest commercial banks

*This four-county area consists of Philadelphia, Bucks, Delaware and Montgomery Counties, Pennsylvania.

in the four counties to the point where they would account for about 76 percent of total commercial deposits.

On August 11, 1966, the Comptroller—who had intervened as a party in the antitrust action as permitted by the Bank Merger Act of 1966—moved to dismiss the complaint; and on August 22 the defendant banks followed suit. Their arguments were directed to showing that the government was unwilling to shoulder the burden of proving that the merger was not justified by its probable effect in meeting the convenience and needs of the community to be served. The district court initially denied the motions to dismiss (App. A, *infra*, pp. 17-25), on the ground that the action was “now only at the notice pleading stage,” and that the complaint was adequate to place the parties on notice that the government believed that the merger was illegal under the Clayton Act as modified by the Bank Merger Act of 1966. However, on November 4, the district court ruled that in order to prove that the merger of defendant banks was illegal the government would be required to prove both that the merger would have substantial anticompetitive effects and “that these anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.” (App. A, *infra*, pp. 14-17.) The court indicated that great weight would be accorded the findings of the Comptroller: if it “appears that the decision of the Comptroller [approving the merger] is dependent on an exercise of discretion, the Court will bow to that

discretion. However, if from the fact findings it appears that the Comptroller abused, exceeded or arbitrarily applied his discretion, the Court will set it aside." (App. A, *infra*, p. 6.)

On December 2, 1966, the defendant banks moved for entry of a final judgment dismissing the complaint on the ground that the government had indicated in various filings that it was unwilling to assume the burden of proof on the "convenience and needs" issue. On December 6, the Comptroller made a similar motion. On December 29, the district court granted the motions, holding that the government must bear the burden of proof on the "convenience and needs" issue. The court indicated that one reason for so holding was that, in the court's opinion, the government was in error in believing that the court "must make an independent decision as to whether the public interest in the merger outweighs any anticompetitive effects." (App. A, *infra*, p. 12.) At the same time that the court dismissed the complaint, it also lifted the statutory stay of the merger, but provided the merger could not be consummated before January 18, 1967.*

THE QUESTION IS SUBSTANTIAL

This appeal presents the identical question as *United States v. First City National Bank of Houston, et al.*, No. 914, this Term—whether the new Bank Merger Act requires the government to establish, as an essential element of violation of the antitrust laws, that the adverse effects of a challenged bank merger

* On January 9, 1967, the government filed an application with this Court for a stay of consummation of the merger pending disposition of this appeal.

are not clearly outweighed by considerations of community convenience and need. The government's reasons for believing that this question is substantial are explained in the jurisdictional statement in No. 914. We incorporate that discussion here by reference.

We emphasize there that the question presented, while nominally a narrow one of burden of proof, in fact involves the fundamental issue whether an anti-trust action attacking a bank merger is basically a proceeding in review of the action of the approving banking agency. In this case the district court expressly held that the court is not to make an independent evaluation of the issues, but is merely to determine whether the agency's determination is an arbitrary abuse of discretion; and that the great weight thus to be accorded the agency's findings constitutes persuasive support for the view that the government, not the defendants, bears the burden of proof with respect to the convenience and needs defense. (Statement, *supra*, p. 6.) This ruling confirms our view that fundamental issues in the construction of the new Bank Merger Act are inescapably presented by these appeals; and that plenary consideration is therefore warranted.

CONCLUSION

Probable jurisdiction should be noted.*

Respectfully submitted,

THURGOOD MARSHALL,
Solicitor General.

DONALD E. TURNER,
Assistant Attorney General.

JANUARY 1967.

*As noted in the application for stay filed with this Court in this case (see p. 6, n. 3, *supra*), we are prepared, if the Court wishes, to accelerate the briefing of this appeal so as to permit it to be argued at the same time as the appeal in No. 914.

APPENDIX A

I

OPINION AND ORDER OF DECEMBER 29, 1966

[CAPTION OMITTED]

CLARY, Chief Judge:

This is an action by the United States Government, filed by the Department of Justice (hereinafter referred to as Justice), to enjoin a merger of the Provident National Bank and Central-Penn National Bank of Philadelphia. The complaint was filed on April 1, 1966, the banks answered on April 5, 1966, and the following day the Comptroller of the Currency intervened as a party. Motions to dismiss were filed by the defendants and intervenor, and on October 13, 1966, an Opinion was filed (Docket Paper #34), together with an Order denying the motions. The basis of the Opinion was that, although this action was solely within the ambit of the Bank Merger Act of 1966 (hereinafter referred to as BMA-66), under principles of notice pleading, it was not necessary to specifically plead the BMA-66. Thus, the complaint of Justice filed under Section 7 of the Clayton Act was held valid.

However, in *United States v. Mercantile Trust Company National Association, et al.*, Civil Action No. 65C 241 (1), (Eastern District of Missouri, Eastern Division, December 19, 1966), Chief Judge Roy

Harper held, on pleadings which are completely similar to the instant case, the following:

The complaint does not allege a monopoly, but alleges that the merger may substantially lessen competition and tend to create a monopoly in violation of Section 7 of the Clayton Act. Thus, the complaint only states part of a claim against the defendants required under BMA-66, in that it does not allege a monopoly, nor that the anticompetitive effects of the merger are not outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the community. The plaintiff's complaint does not meet the absolute basic minimum standards of notice pleading, in that it has not alleged a violation of BMA-66, the act that applies to all bank mergers, nor has it alleged sufficient facts to support such violation.

Judge Harper dismissed the case with privilege to amend within twenty days. In the instant case, with the pleadings complete, the Government has taken an adamant position as hereinafter discussed.

After the Opinion of October 13, 1966, denying the motions to dismiss was filed, further pre-trial proceedings were had, and the Court ordered each side to submit an Identification of Witnesses, Summary of Evidence, and Statement of Position. This the Department of Justice did on November 30, 1966 (Docket Paper #44). In this document Justice stated unequivocally that it intended to prove a violation of Section 7 of the Clayton Act only, without any reference to BMA-66, contending that this was an action under Section 7, and that it was entitled to a determination of the issues on that sole basis. The ruling of this Court was exactly to the contrary.

The defendant banks, upon being served with plaintiff's Identification of Witnesses, Summary of Evi-

dence, and Statement of Position on December 2, 1966, filed a Motion for Final Judgment (Docket Paper #45) with exhibits in support thereof. The Comptroller intervenor filed a Motion for Final Judgment (Docket Paper #46) on December 6, 1966. Thereafter, on December 12, 1966, a conference was held in chambers at which the subject was discussed in depth, a transcript of which hearing is part of the record of this case, and the Court took the matter under consideration. It is these two Motions for Final Judgment which are presently before the Court for disposition.

To date no one has denied the fact that Provident, in the four-county market area designated by the Opinion of the Supreme Court in *United States v. Philadelphia National Bank*, 374 U.S. 371 (1963),¹ controls a definite percentage of the total assets, of the total loans, of the total IPC deposits, and of the total banking offices. Likewise, no one has denied that Central-Penn controls a definite percentage of the total assets, of the total loans, of total IPC deposits, and of the total banking offices doing business in the four-county area. In other words, no one has denied that there will be a concentration of the total of these two percentages of the total assets, of the total loans, of total IPC deposits, and of the total banking offices in the four-county area in the new bank if merged as permitted by the Comptroller of the Currency. Justice says in its Statement of Position that it will prove this and no more. Paying lip service to the ruling of this Court of October 13, 1966, it contends that BMA-66 may have some relevancy, but that this

¹ Despite the finding of the District Court that the two banks involved in that case were realistically in competition with banks of other states, the Supreme Court limited its consideration to the case to a four-county area.

Court is without power to consider in any way the finding of the Comptroller that this merger meets the specifications and qualifications of BMA-66.

This Court has thus been asked by the Government to rule that the banks and Comptroller must present evidence with respect to the merger de novo as if it were being done for the first time; come to its own conclusions independently of the Comptroller and "free of presumptions traceable to anyone" in determining the validity of this merger. The expertise, know-how, direct findings, and conclusions of the Comptroller, the Government contends, are of absolutely no probative value in this Court. In other words, the Government contends that this Court must make an independent decision as to whether the public interest in the merger outweighs any anticompetitive effects. This contention, if considered again, would raise the constitutional question of separation of powers.

If the function performed by an agency is "administrative" or "legislative" and if a federal court is required to do all over again what the agency has done, the system of review violates Article III of the Constitution. (Davis Administrative Law Treatise, 1958, Vol. 4, p. 180, §29.10.)

See also the Opinion of Judge Pope in *United States v. Crocker Anglo National Bank, et al.*, Civil Action No. 41,808, (District of California, Southern Division, October 6, 1966).

The Court, therefore, finds that since Justice has definitely refused to try its case under BMA-66, the banks should not be subjected to the expense and inconvenience of a trial when Justice refuses to prove other than admitted facts to establish its case. Its position has been taken deliberately and directly in

* Plaintiff's Pre-trial Brief (Docket Paper #16), page 28.

opposition to the ruling of the Court of October 13, 1966, and is consistent with the position of the Government on a nationwide basis, even though the Courts have been unanimous in refusing to accept its contention. *United States v. Mercantile Trust Company National Association, et al.*, No. 65C 241 (1), (District of Missouri, Eastern Division, December 19, 1966); *United States v. First City National Bank of Houston, et al.*, Civil Action No. 66-H-695, (Southern District of Texas, Houston Division, December 2, 1966); *United States v. First National Bank of Hawaii, et al.*, Civil Action No. 2540, (District of Hawaii, October 31, 1966); *United States v. Crocker Anglo National Bank, et al.*, Civil Action No. 41,808, *supra*.

At the hearing on December 12, 1966, Justice also took the position that if the Court should grant the motion of the defendant banks and the intervenor, the Court should, in the exercise of its discretion, continue the statutory stay automatically entered when this suit was filed, taking the position that it was the sole purpose of Congress to halt all mergers after suit was filed until there has been a final determination on the merits. In this instance, it is the Department of Justice alone which has refused to proceed with trial on the merits of the case under BMA-66. I can read nowhere in the legislative history that it was the intention of the Congress of the United States to hold up mergers indefinitely pending determination of a Department of Justice theory. It appears throughout the legislative history that the Congress was concerned with the problems of divestiture as well as the tremendous expense to the applicant banks when mergers were unduly delayed, and that stay should be granted only when the Government, through the Department of Justice, in good faith proceeded promptly to a trial on the merits. This Justice refuses to do by its intransigent posi-

tion of the applicability of Section 7 of the Clayton Act only. It is, therefore, the decision of this Court that it will not stay the merger, except for a relatively short time to permit Justice to take such further action as it sees fit. A time lag, even of the statutory time for appeal, at the present time, might destroy the efficacy of the merger because of mounting expense.

The Court, therefore, enters the following

ORDER

AND NOW, to wit, this 29th day of December, 1966, upon consideration of defendant banks' Motion for Final Judgment (Docket Paper #45), Motion of Intervenor for Final Judgment (Docket Paper #46), the entire record of the case, including briefs, hearings, and arguments, it is ORDERED, ADJUDGED AND DECREED:

1. That the complaint in this case be and it is hereby DISMISSED with prejudice;

2. That the statutory stay of the merger is LIFTED and the banks may merge at a time to be determined by them, but not earlier than January 18, 1967.

By the Court:

THOMAS J. CLARY,
Chief Judge.

II

ORAL DECISION, NOVEMBER 4

Before Hon. THOMAS J. CLARY, Chief Judge.

The first question to be resolved is how much weight is to be given to the findings of the Comptroller. In the recent case of *U.S. v. Crocker Anglo National Bank* the Court, in answer to this question, declared its intention to apply the substantial evi-

dence test to the Comptroller's public interest findings, calling the "convenience and needs" test of BMA-66, Section 5(B) non-judicial in character. Yet, *Crocker* would also apply the substantial evidence test, with less vigor, to the Comptroller's findings on competition.

Crocker, however, is distinguishable from the case at bar, and it is distinguishable on one fact. In *Crocker* the findings of the Comptroller were based on a public, evidentiary hearing which produced 1,605 pages of testimony and exhibits. There was no such hearing in the instant proceeding. Therefore, although the *Crocker* holding rules the instant case as a Court review of an agency decision, the question of scope of review comes under the rule of *First National Bank of Smithfield, North Carolina v. Saxon*, 352 F. 2d 267 (4 Cir. 1965).

Smithfield involved a branch bank approval under 12 U.S.C. Section 36 in which the Comptroller approved a new branch without a hearing. The Court first held that a hearing was not required because 12 U.S.C. Section 36 made no provision for one. A hearing is only required when expressly directed by the empowering statute. Then, after this determination, the Court declared that weight is only to be given to the Comptroller's decision if after a Court hearing in law and in fact it is found that his decision rested on an exercise of discretion. This is because the Court will not substitute its discretion for the Comptroller's.

This Court finds *Smithfield* to be analogous to the instant case. The BMA-66, like 12 U.S.C. Section 36, has no requirement for a hearing before the Comptroller, thus allowing the Comptroller to act at his discretion. However, when there is no hearing, it cannot be contended that the findings of the Comp-

troller should be given given the weight of hearing based findings.

The basis for this conclusion is best seen in the following quote from *Smithfield*:

We have said the Comptroller did not act arbitrarily in not allowing a hearing. However, a necessary consequence of his unilateral procedure is that the facts on which the Comptroller presumably acted should not be given the preferred position accorded by the substantial-evidence rule. The rule would declare them indisputable if some reasonable basis for them may be found in the evidence. Applied here, the plaintiff would be bound by evidence offered in a proceeding in which it was not heard. Hence, there is no place in the review for an opening-presumption of correctness of any fact which it may appear to the Court was adopted by the Comptroller for his decision.

The substantial evidence rule, therefore, may be invoked only when a proper foundation is laid for it as was done in *Crocker*.

Therefore, the Court will hear all evidence in law and in fact, and if after it has made its findings, it then appears that the decision of the Comptroller is dependent on an exercise of discretion, the Court will bow to that discretion. However, if from the fact findings, it appears that the Comptroller abused, exceeded, or arbitrarily applied his discretion, the Court will set it aside.

The other question requiring answer is how is the burden of proof to be allocated? However, this Court's decision that Justice's only action lies within the ambit of BMA-66 allows only one solution. The allocation is as follows:

Justice must prove a violation of BMA-66, Section 5(B). To show this violation, Justice has to prima facie establish (1) that there are anticompetitive ef-

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The Court, therefore, finds that since Justice has definitely refused to try its case under BMA-66, the banks should not be subjected to the expense and inconvenience of a trial when Justice refuses to prove other than admitted facts to establish its case. Its position has been taken deliberately and directly in

opposition to the ruling of the Court of October 18, 1966, and is consistent with the position of the Government on a nationwide basis, even though the Courts have been unanimous in refusing to accept its contention. *United States v. Mercantile Trust Company National Association, et al.*, No. 650-241 (1), (District of Missouri, Eastern Division, December 19, 1966); *United States v. First City National Bank of Houston, et al.*, Civil Action No. 66-H-695, (Southern District of Texas, Houston Division, December 2, 1966); *United States v. First National Bank of Hawaii, et al.*, Civil Action No. 2540, (District of Hawaii, October 31, 1966); *United States v. Grocker Anglo National Bank, et al.*, Civil Action No. 41,808, *supra*.

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By the Court:

THOMAS J. CLARY,
Chief Judge.

II

ORAL DECISION, NOVEMBER 4

Before Hon. THOMAS J. CLARY, Chief Judge.

The first question to be resolved is how much weight is to be given to the findings of the Comptroller. In the recent case of *U.S. v. Crocker Anglo National Bank* the Court, in answer to this question, declared its intention to apply the substantial evi-

dence test to the Comptroller's public interest findings, calling the "convenience and needs" test of BMA-66, Section 5(B) non-judicial in character. Yet, *Crocker* would also apply the substantial evidence test, with less vigor, to the Comptroller's findings on competition.

Crocker, however, is distinguishable from the case at bar, and it is distinguishable on one fact. In *Crocker* the findings of the Comptroller were based on a public, evidentiary hearing which produced 1,605 pages of testimony and exhibits. There was no such hearing in the instant proceeding. Therefore, although the *Crocker* holding rules the instant case as a Court review of an agency decision, the question of scope of review comes under the rule of *First National Bank of Smithfield, North Carolina v. Saxon*, 352 F.2d 267 (4 Cir. 1965).

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This Court finds *Smithfield* to be analogous to the instant case. The BMA-66, like 12 U.S.C. Section 36, has no requirement for a hearing before the Comptroller, thus allowing the Comptroller to act at his discretion. However, when there is no hearing, it cannot be contended that the findings of the Comptroller

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The substantial evidence rule, therefore, may be invoked only when a proper foundation is laid for it as was done in *Crocker*.

Therefore, the Court will hear all evidence in law and in fact, and if after it has made its findings, it then appears that the decision of the Comptroller is dependent on an exercise of discretion, the Court will bow to that discretion. However, if from the fact findings, it appears that the Comptroller abused, exceeded, or arbitrarily applied his discretion, the Court will set it aside.

The other question requiring answer is how is the burden of proof to be allocated? However, this Court's decision that Justice's only action lies within the ambit of BMA-66 allows only one solution. The allocation is as follows:

Justice must prove a violation of BMA-66, Section 5(B). To show this violation, Justice has to prima facie establish (1) that there are anticompetitive ef-

fects, as defined in Section 5(B) and (2) that these anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Only such a showing will make out a case for violation of BMA-66. Proof of anticompetitive effects solely is no longer controlling. A merger may be anticompetitive and yet be legal because it promotes the public interest as set forth in the Act. Therefore, for Justice to show illegality, it must prove first that a merger is not only anticompetitive, but also *prima facie* that it is not in the public interest.

If and when Justice establishes such a *prima facie* violation of BMA-66, the burden of producing evidence will shift to the Banks and the Comptroller to counter the Justice Department's proof.

Once the Banks and Comptroller have presented their case, Justice will be given an opportunity to rebut such matters as are raised by the Banks and Comptroller in regard to the convenience and needs test. In any event, however, Justice has the overall burden of persuasion to show the illegality of the merger.

III

OPINION AND ORDER OF OCTOBER 13, 1966

[CAPTION OMITTED]

CLARY, *Chief Judge*:

On December 6, 1965, the Central-Penn National Bank of Philadelphia and the Provident National Bank of Philadelphia applied to the office of the Comptroller of the Currency for permission to merge under the charter of the Central-Penn National Bank and with the title of Provident National Bank. The

report by the Board of Governors of the Federal Reserve System to the Comptroller of the Currency under Section 18(b) of the Federal Deposit Insurance Act on the competitive factors involved in the proposed merger dated January 7, 1966, was that "the overall effect of the proposed merger on competition would be significantly adverse." On the same day, the Attorney General of the United States reported, "There are strong reasons, therefore, for believing that the proposed merger would have an important adverse effect on competition within the Philadelphia banking market." The anticompetitive effects of this merger are important and considerable and there are likely to be no redeeming features." The Federal Deposit Insurance Corporation filed no comment. On March 2, 1966, the Comptroller of the Currency approved the merger, and on March 31, 1966, filed his written decision in respect thereof. In that decision the Comptroller noted that this application to merge was the first filed by banks of significant size to be acted upon by his office since the passage of the 1966 Amendment to the Bank Merger Act. He stated, "The new law, passed by Congress to moderate the decisions of the Supreme Court in *U.S. v. Philadelphia National Bank*, et al., 374 U.S. 321 (1963) and *U.S. v. Lexington*, 376 U.S. 665 (1964), recognizes that traditional antitrust concepts cannot be applied to banking without substantial modification." His findings then followed sustaining the merger.

On April 1, 1966, the present action brought by the United States of America against Provident National Bank and Central-Penn National Bank of Philadelphia, defendants, was filed to enjoin the merger. On April 7, 1966, James J. Saxon, Comptroller of the Currency, intervened and thus is a party to the action, as provided by Section 1828(c)(7)(D) of Title 12, United States Code. Since under the provisions

of the afore-quoted Section 1825 of Title 12 a novel situation has been brought about wherein two departments of the Executive Branch of the Government are litigating one against the other, with the approval of the Congress of the United States, it will be necessary to delineate in this Opinion to which branch of Government is being referred. Consequently, for the purposes of this Opinion, the plaintiff hereafter will be referred to as "Department of Justice" or "Justice"; the defendant Provident National Bank as "Provident"; the defendant Central Penn National Bank of Philadelphia as "Central"; the joint defendants as "Banks"; the Comptroller of the Currency as "Comptroller" or "Intervenor", and the Bank Merger Act, Public Law 89-356, 64 Stat. 892, will be referred to as "BMA-66". The stated purpose of the aforesaid Act, as set forth in the slip sheet publication reads as follows:

To establish a procedure for the review of proposed bank mergers so as to eliminate the necessity for the dissolution of merged banks, and for other purposes.

The pertinent pleadings to date which are essential to a decision on the present motions consist of a complaint filed by Justice, a joint answer filed by the Banks, the order permitting intervention of James J. Saxon, Comptroller of the Currency, answer of the Comptroller, motion of the Comptroller to dismiss, and motion of the Banks to dismiss. The basis for each of the motions to dismiss is that the complaint "fails to state a claim upon which relief can be granted." There is no question that a law suit was started by Justice to enjoin the merger before the thirtieth calendar day after the date of approval by the agency (March 4, 1966). Thus, Justice has met the fundamental requirement of BMA-66, Title 12, Section

(c)(7)(A), which prohibits any litigation challenging the merger after the thirtieth calendar day following approval. Justice has met the statutory limitation of action in that regard. A reading of the complaint leaves no doubt that Justice intended to plead, and did plead, a case of antitrust violation strictly in accordance with Section 7 of the Clayton Act (15 U.S.C. Section 18) and has attempted to ignore completely BMA-66. There are too many pointed references in the complaint challenging all alleged violations of antitrust law as contravening Section 7 of the Clayton Act only. Justice bottoms its case on the decision of the Supreme Court in *U.S. v. Philadelphia National Bank, et al.*, 374 U.S. 321 (1963). It is this specific pleading of Justice charging a violation of Section 7 which is relied upon by the Banks and the intervening Comptroller in their motions to dismiss. The Banks and Comptroller insist that a Section 7 action is no longer available to Justice in a merger or consolidation of the type involved in the instant case, and that any actions must be grounded in BMA-66 and no other statute in the light of the wording of BMA-66. The Banks and Comptroller urge that since Justice has failed to ground its action in a challenge under BMA-66 within the thirty day period, and that since such failure is substantive rather than procedural, the limitations contained in BMA-66 are applicable, that the Court is thus without jurisdiction, and the action must be dismissed. In plain language they insist that Justice has deliberately sought to avoid any requirements contained in BMA-66 which deletes "line of commerce" and adds another facet to the standards governing bank mergers, i.e., if anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served,

the agency in question is authorized to approve a proposed merger. This intransigence of Justice, they contend, is substantive, not procedural, and thus fatal to the position of Justice.

The weakness of the contentions of the Banks and of the Comptroller lies in the fact that we are now only at the notice pleading stage. The complaint specifically charges that the history of commercial banking in the four-county area of Philadelphia has been one of consolidations, mergers and acquisitions, with a heavy concentration of the business of commercial banking within a relatively few banks; that Provident controlled 9% of the total assets, 9% of the total loans, 9% of the total PIC [sic] deposits, 10% of the total IPC demand deposits, and 9% of the banking offices doing business in the four-county area; that Central Penn, the sixth largest commercial bank in the four-county area, controlled 5% of the total assets, 5% of the total loans, 5% of the total IPC deposits, 5% of the total IPC demand deposits, and 6% of the banking offices doing business in the four-county area; that Provident is the product of seven mergers or consolidations since 1947, and Central Penn is the product of six such mergers or consolidations since 1949; that the proposed merged bank would be the fourth largest bank in the area, controlling 14% of the total assets, 14% of the total loans, 14% of the total IPC deposits, 15% of the total IPC demand deposits, and 15% of the banking offices of 36 banks doing business in the four-county area. Also, Justice contends that after the proposed merger, the five largest banks in the area would control 78% of the total assets, 79% of the total loans, 78% of the total IPC deposits, 77% of the total IPC demand deposits, and 68% of the banking offices of 36 banks doing business in the area; that it would destroy competition between each other and other banks; and that it would substantially

lessen competition or tend to create a monopoly. It also charges that competition generally in the commercial banks in the four-county area will be substantially and unreasonably lessened, and that concentration in commercial banking in the four-county area will be substantially and unreasonably increased.

It cannot be gainsaid that if Justice had seen fit to plead generally and without reference to any particular statute, instead of specifically proceeding under Section 7 of the Clayton Act, and these factors pleaded might result in a violation of antitrust laws, the Court would of necessity have to hear the case. The only question for decision then is, does the reference solely to Section 7 invalidate the cause of action filed by Justice? For reasons hereafter set forth, this Court decides that it does not.

The purpose of notice pleading is merely to inform opposing parties what such opposing parties have to meet and defend. Justice charges a violation of antitrust laws, despite its insistence upon Section 7. This suit is brought under antitrust laws of the United States.

The reference to a statute as being the basic ground upon which an action is brought, even if completely incorrect, is no ground for the dismissal of an action where there is a statute in existence which would warrant a valid cause of action for which relief could be granted upon the facts as pleaded. *Missouri, K. & T.R. Co. v. Wolf*, 226 U.S. 510 (1913). This case involved a complaint based upon a state statute which had been repealed by the enactment of a federal statute not mentioned in the complaint. Mr. Justice Pitney, writing for the Court, held that the Court was presumed to be cognizant of the enactment and that the pleading was not required to refer to the federal act. He further stated that reference to the state statute no more vitiated the pleading than a reference

to any other repealed statute would have done. It was only important that there were sufficient allegations to support an action under the new federal act.

The modern theory of notice pleading is one of even greater liberality, thus bolstering the decision reached in *Missouri K. & T. R. Co. v. Wolf*, *supra*. Today, the basic principle is that pleadings are no longer to be held to the rigid standards of the common law and neither absolute clarity nor absolute precision is required. *United States v. Groen Zellerbach Corporation*, 141 F. Supp. 118 (N.D. Ill. 1956). It is enough to sustain a pleading against a motion to dismiss that a defendant is informed with reasonable particularity of a legally cognizable claim against him. If the plaintiff could recover on any state of facts, which it might prove in support of its allegations as laid, a motion to dismiss will be denied. *Conley v. Gibson*, 355 U.S. 41 (1957); *Melo-Sonics Corporation v. Grepp*, 342 F. 2d 856 (3 Cir. 1965); *Fuller v. Highway Truck Drivers & Helpers Local 107*, 233 F. Supp. 115 (E.D. Pa. 1964); *Miller v. Bargain City, U.S.A., Inc.*, 229 F. Supp. 33 (E.D. Pa. 1964). Therefore, today the legal averments of a pleading are not so important as long as there are allegations which if proved most favorably to plaintiff would permit recovery under the laws of the United States. If, in such a complaint, there also appears a reference to an irrelevant statute, or if no statute is mentioned, the Court need only take judicial notice of the relevant statute. As stated in *Buell v. Sears, Roebuck & Co.*, 321 F. 2d 168 (10 Cir. 1963), it is not necessary to plead what may be judicially noticed. And, it is horn-book law that federal acts are a proper subject for judicial notice. There is a further principle of pleading which has been recognized in federal procedure since *United States v. Morris*, 23 U.S. 246, 6 L. Ed. 314 (1825).

that a subsequent pleading of an adversary, if not thereafter denied, may cure a defect in a prior pleading. *Cole v. Ralph*, 252 U.S. 286, 40 S. Ct. 321, 64 L. Ed. 567 (1920); *Albertson v. Federal Communications System*, 87 U.S. App. D.C. 39, 182 F. 2d 397 (1950); *Bullen v. DeBretteville*, 239 F. 2d 824 (1956).

This principle applies to substantive as well as procedural omissions.

In the first defense of their answer, defendants claim that any action lies only under BMA-66. In their second defense, the defendant Banks put into controversy the question as to whether all right of Justice to enjoin the merger is vested in BMA-66. The answer of the Comptroller likewise puts into controversy the Bank Merger Act of 1966 by its prayer for relief.

We have long passed the stage peculiar to common law pleading that a failure in form of pleading vitiates the entire proceeding. This is an important case to all and is not a private quarrel between two branches of the Executive Department. The Congress of the United States has, for the first time, permitted two co-ordinate branches of the same department of Government to litigate opposite views in a judicial proceeding, thus affording one department of the Executive Branch, aggrieved by an alleged arbitrary position of the Department of Justice, to properly present for the first time before the Judicial side of the Government its contention when it is in violent disagreement with the Department of Justice. While quite novel, in view of increasing differences between departments of Government, the provision is undoubtedly necessary.

In denying the motions to dismiss at this time, the Court does not sustain the position of Justice that it is entitled to sue under Section 7 of the Clayton Act. The only suit open to Justice to enjoin a bank

merger lies solely within the ambit of BMA-66. It is not necessary at this time to decide the question of burden of proof, whether on Justice or on the Comptroller and Banks. That will be ruled upon in later pre-trial procedures.

ORDER

AND NOW, to wit, this 13th day of October, 1966, for the reasons set forth in the foregoing Opinion, it is ORDERED, ADJUDGED AND DECREED that defendants' Motion to Dismiss and intervenor's Motion to Dismiss be and they are hereby DENIED.

By the Court:

THOMAS J. CLARY,

Chief Judge.

(A) any proposed merger transaction which would result in a monopoly, of which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or (B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the

APPENDIX B

STATUTES INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Section 18(c) of the Bank Merger Act, as amended, 80 Stat. 7, 12 U.S.C. 1828(c) (1966 Supp.), provides in pertinent part:

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the

anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(7)(A) Any action brought under the anti-trust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issue presented.

(7)(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of [Title 15], the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

On December 8, 1965, the Central Penn National Bank of Philadelphia, Philadelphia, Pennsylvania, and the Provident National Bank, Philadelphia, Pennsylvania, applied to the Office of the Comptroller of the Currency for permission to merge under the charter of the former and with the title of Provident National Bank.

APPENDIX C

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA, PENNSYLVANIA, AND PROVIDENT NATIONAL BANK, PHILADELPHIA, PENNSYLVANIA; UNDER THE CHARTER OF THE FORMER AND WITH THE TITLE OF PROVIDENT NATIONAL BANK

THE COMPTROLLER OF THE CURRENCY,
[SEAL] **THE ADMINISTRATOR,**
OF NATIONAL BANKS,
Washington.

Decision of the Office of the Comptroller of the Currency on the Application To Merge Central-Penn National Bank of Philadelphia, Philadelphia, Pennsylvania, and Provident National Bank, Philadelphia, Pennsylvania, Under the Charter of the Former and With the Title of Provident National Bank

STATEMENT

On December 6, 1965, the Central-Penn National Bank of Philadelphia, Philadelphia, Pennsylvania, and the Provident National Bank, Philadelphia, Pennsylvania, applied to the Office of the Comptroller of the Currency for permission to merge under the charter of the former and with the title of Provident National Bank.

This application to merge is the first filed by banks of significant size to be acted upon by this Office since the passage of the 1966 Amendment to the Bank Merger Act. The new law, passed by Congress to moderate the decisions of the Supreme Court in *U.S. v. Philadelphia National Bank, et al.*, 374 U.S. 321 (1963) and *U.S. v. Lexington* 376 U.S. 665 (1964), recognizes that traditional anti-trust concepts cannot be applied to banking without substantial modification. If a realistic view is to be taken, it must start with a rejection of the traditional anti-trust concepts which Congress has recognized to be inapplicable to the banking industry. Congress, relying on the specialized knowledge of the banking agencies, has given them the task of interpreting the new statutes.

The significant provisions controlling agency action on a bank merger application are set forth in Section 5(B) of the new Act.¹ This section permits the responsible agency to balance the convenience and needs of the community, considering the managerial and financial resources of the participating banks and the resulting bank, which the merger will serve against the anti-competitive effect the merger may produce. If the convenience and needs of the community to be served clearly outweigh the anti-competitive aspects, the merger must be approved.

The first question to be considered, therefore, is the impact of the proposed merger on competition. Competition among financial institutions, as in other in-

¹ Section 5(A), which provides that the responsible agency shall not approve a bank merger which would result in a monopoly or constitute an attempt to monopolize the business of banking, is not applicable in this case.

industries, must exist in a certain market referred to in the statute as a "section of the country." The extent of this market is dependent upon the various services provided by financial institutions. While virtually all banks and other financial institutions compete on the local neighborhood basis for the deposits of the average householder, only the larger institutions can successfully compete in the national market for the large credits of industrial and commercial customers doing business throughout the nation. Only a limited number of American banks compete in the international market. Thus, in this case, as in every other to arise under the new law, the extent and degree of competition among the applicant banks and other financial institutions must be evaluated in all its aspects. It no longer suffices to say that since some competition among banks, either actual or potential, is eliminated, the merger is to be condemned.

Although both Provident National Bank and Central Penn. National Bank, the participants in this proposal, are headquartered in Philadelphia and both operate branch bank systems in the four-county area comprised of Philadelphia, Bucks, Delaware and Montgomery Counties, as is permitted by state statutes, this area does not constitute the "section of the country" under the new statute. Although the Supreme Court in the Philadelphia case ruled that this four-county area was the relevant market when interpreting Section 7 of the Clayton Act, the new statute, designed to modify that decision, permits a new and realistic approach. Money, either in the form of savings, deposits, or credits, moves with great ease and rapidity; its flow is not impeded by political boundary lines. The movements of money in and out of a bank are determined by the convenience and needs of its many and varied customers, whose scat-

tered addresses serve to define the extension of the bank's market. Thus, the branch banking laws of the states do not effectively define a bank's market. In this case, while it is proper to examine competition among branches for local retail and household deposits, it is also necessary to view total competition among all financial institutions in the Philadelphia area, including the adjacent sections of New Jersey, as well as in the northeastern part of the United States.

The proximity of New York City, the Nation's financial center, means that the Philadelphia banks also face strong competition from New York banks. Judge Clary, in his District Court opinion in the *Philadelpha* case, stated then, as is still more clearly the case today, that:

The evidence demonstrated beyond peradventure of doubt that the Philadelphia area, plus parts of Delaware and New Jersey, and also New York City, as well as most of the northeastern part of the United States, is the area of active competition for Philadelphia commercial banks and for the proposed merged bank. The testimony discloses that the competitive effect upon all Philadelphia commercial banks will be minimal. The larger bank, however, will be able to compete on better terms and in a better atmosphere with the banks of other cities and states that have been draining this area of banking business which might well be and perhaps properly should be handled here, and which cannot be handled under present circumstances. That it will benefit the city and area has been established clearly by a fair preponderance of the evidence.

Though Section 5(b) of the 1966 Amendment to the Bank Merger Act bears some resemblance to Section 7 of the Clayton Act, the difference is most

marked in that the new bank merger statute makes no reference to "line of commerce." The new statute allows consideration of a bank merger in the context of all competing financial institutions operating in the market. It is thus much more realistic than the narrow *Philadelphia* rule. Henceforth, the competitive impact of a bank merger must be assessed in the light of savings banks, insurance companies, savings and loan associations, credit unions, finance companies, small loan companies, factors, and even department stores and mail order houses that compete for the credit lines or the savings dollar of the public.

The Provident National Bank and the Central Penn National Bank, respectively the fifth and seventh largest commercial banks in Philadelphia, serve a standard metropolitan statistical area which is the second in size in the eastern United States. The Philadelphia standard metropolitan statistical area is comprised of Philadelphia County, which is coextensive with the city, Bucks, Chester, Delaware and Montgomery Counties in Pennsylvania as well as Burlington, Camden and Gloucester Counties in New Jersey. This area, an important segment in the rapidly expanding megalopolis of the eastern seaboard, has an estimated population of 4,300,000 people. More than 25,000,000 people live within 100 miles of Philadelphia. Only by evaluating this proposed merger against the social, economic and financial resources at work in this vast and densely populated area can its impact be assessed. Its competitive effect must be viewed in the light of the overall financial structure of this area, its beneficial effect upon convenience and needs of this area must be seen in the perspective of the commercial, industrial, cultural and sociological composition of the area.

A comprehensive view of the Philadelphia area economic base reveals that it is comprised not only of many large, medium-sized and small industrial companies out also of a wide range of wholesale and retail establishments and service companies in addition to educational, governmental and research facilities. The 1963 U.S. Department of Commerce Census of Business gives the following statistics for the Philadelphia area: 8,125 manufacturing plants with a total payroll of \$3,320,970,000 and value added of \$5,987,310,000; 7,476 wholesale establishments with a payroll of \$530,541,000 had sales of \$10,252,356,000; 39,358 retail stores with a payroll of \$666,822,000 had sales of \$5,737,442,000; and 22,809 selected service establishments with payrolls of \$321,010,000 had receipts of \$1,074,494,000.

This highly diversified Philadelphia area economy presents needs for the widest possible range of banking services. Nearly 90% of all classes of manufacturing output as recognized by the U.S. Department of Commerce are represented in this metropolitan area. The proportion of the nation's value added in five major industries by Philadelphia-based companies is as follows: petroleum and coal, 5.8%; apparel, 5%; chemicals, 4.6%; rubber and plastics, 4.4%; and fabricated metals, 5.1%.

The significance of manufacturing to the Philadelphia area is attested by the fact that some 35% of all gainfully employed workers are on the payrolls of manufacturing plants. The employment profile of the area is as follows: manufacturing durable, 17.3%; manufacturing non-durable, 17.6%; trade, 19.8%; service and miscellaneous, 15.2%; government, 12.9%; transportation and utilities, 7%; finance, insurance, and real estate 5.5%; and construction, 4.7%.

Though manufacturing is especially important to

the Philadelphia area, no single segment dominates its economy. Only two industries, electrical machinery and apparel, account individually for more than 10% of manufacturing employment. In the electrical equipment field the presence of Electric Storage Battery, I-T-E Circuit Breaker Co., International Resistance and Progress Manufacturing together with major establishments of Radio Corporation of America, General Electric, Burroughs, Philco, Sperry Rand and Westinghouse make this area one of the world's greatest concentrations of electrical and electronics manufacturing plants. In the apparel field, the area's second largest manufacturing industry, there are a great many small, independently operated firms among which are many with a long history in the business.

Other manufacturing industries contribute to the prosperous economic base of this area. There are some 700 metal manufacturers, such as Lukens Steel and Alan Wood Steel. U.S. Steel also maintains its famous Fairless Works in this area. The Budd Company, long a leading supplier of transportation equipment, is expanding its local operations to include work in metallurgy, electronics and plastics. Pennsylvania Sugar and Franklin Sugar make the area a leader in sugar refining. Leeds and Northrup, a local firm, manufactures instruments here, as do plants of Honeywell. Chilton and Curtis are great names in publishing. Scott Paper is a Philadelphia-based national leader in the paper industry. SKF Industries makes bearings and has major plants here. Campbell Soup has its headquarters just across from Philadelphia, in Camden, New Jersey. Much of the manufacturing potential of the Philadelphia area is directed to the production of military supplies and national defense material.

Philadelphia is the site of a United States Mint and a center for other civilian federal functions, as well as for activities of the Commonwealth of Pennsylvania.

The wholesale and retail trades employ 19.8% of the area workers and account for \$15.990 billion in annual sales. Two of the nation's ten largest merchandising firms, Acme Markets, with annual sales of \$1.161 billion, and Food Fair Stores, with annual sales of \$1.105 billion, are among this number.

In the petro-chemical industry, the Philadelphia complex ranks second in the nation. The two locally headquartered firms in the oil area are Atlantic Refining, with \$636 million in annual sales, and Sun Oil, with \$838 million in annual sales. Other oil producing and processing firms with plants in the area are Gulf, Mobil and Sinclair, which are among the country's largest. The chemical industry located in the area has grown spectacularly between 1958 and 1962, when its value added increased 35% and its employment increased 12%. Recent plant and equipment investments by such firms as Rohm and Haas, Pennsalt, DuPont and Thiokol indicate the vitality of this industry. Pharmaceutical plants, a specialized chemical industry, have also contributed to Philadelphia's recent growth. The Smith, Kline and French Laboratories, and William H. Rorer have recorded excellent profits. Wyeth, Merck, Sharp and Dohme, McNeil, and other famous firms with manufacturing and research laboratories have contributed to the economy of the area.

The Philadelphia area has become a national center of research and development, especially in the biomedical sciences and electronics, because of the close cooperation among industry, independent research institutions and the area's colleges and universities. A

new Science Center, near the campuses of Drexel Institute of Technology and the University of Pennsylvania, will further foster and extend this cooperation. The Franklin Institute conducts industrial research in its independent laboratories in chemistry, physics, electronics and engineering. National Science Foundation data indicate that, in 1962, 3,700 scientists were engaged in research and development in the Philadelphia metropolitan area. Their efforts were concentrated in chemistry, physics, and the biological sciences.

Another very significant factor contributing to the economic base of the Philadelphia standard metropolitan statistical area is its seaport. This port, which is part of a vast complex stretching from Trenton, New Jersey, on the north to Wilmington, Delaware, on the south, serves thirteen states in which one-third of the nation's population lives and works. Having handled 108.9 million short tons in 1964, it ranks second only to New York in total water-borne commerce and is first in foreign commerce. Its importance to the economy of the area can hardly be exaggerated; it provides, directly or indirectly, more than 96,000 jobs and 20% of all manufacturing jobs depend on raw materials received through the port.

The port can accommodate 150 deep-draft vessels at its docks, and a 40-foot channel has been dredged up river to the U.S. Steel Fairless plant. Three trunk line railroads run direct to shipside and are interconnected by the Philadelphia Belt Line Railroad. Over-the-road service to all parts of the United States and Canada from this port is furnished by approximately 350 motor track lines. The port has three ore piers with unloading capacity of 5,600 tons per hour; six oil docks with storage capacity of 9,900,000 barrels; two grain elevators with a capacity

of $4\frac{3}{4}$ million bushels; three coal tipples with capacity of 37,500 tons per eight-hour day; eighty-one warehouses for general storage with 13.5 million square feet of space; and nine cold storage warehouses with nearly 12 million cubic feet of space.

Since colonial days, educational, scientific and cultural activities have contributed to the economic vitality of Philadelphia and its environs. Today there are 54 colleges and universities, including six major medical schools and 129 hospitals, as well as many other respected scientific and cultural institutions serving the area's needs.

Philadelphia is also a major transportation center. Of the railroads serving the city, the Pennsylvania Railroad and the Reading Company are locally headquartered. The International Airport, located only twenty minutes from the center of the city, is becoming an attraction for new business development. Philadelphia is also served by a network of super-highways centering on the Pennsylvania and New Jersey Turnpike.

The City of Philadelphia faces severe problems typical of many American urban centers today. It has experienced a substantial exodus of population to the suburbs and those who moved out have been replaced mostly by unskilled immigrants from the south, who, due to their lack of training, are handicapped in finding employment. Efforts have been made by both government and private citizens to revitalize the economy of Philadelphia and a number of projects are presently in progress. In the field of housing, a massive plan has been set in motion to replace substandard housing facilities in the city. Steps are also being taken to improve cargo handling facilities.

Against this background of the Philadelphia area's manufacturing, commercial, scientific and cultural base, it is appropriate to examine the financial resources available to meet its expanding credit needs. Such an examination must, of necessity, encompass not only commercial banks but also the savings banks, savings and loan associations, insurance companies, small loan companies, credit unions, factors and other financial institutions.

Such an analysis of the Philadelphia area financial structure must consider the 84 commercial banks, operating 515 offices, with total assets of \$8.495 billion; four mutual savings banks having withdrawable balances of \$2.861 billion; 260 savings and loan associations with \$2.555 billion in total assets; 300 insurance companies, including seven large Philadelphia-based insurance companies with assets of \$3.846 billion; 285 credit unions in the city of Philadelphia alone; and about 100 sales finance companies, about 300 small loan companies, and 15 factoring offices, the aggregate Philadelphia resources of which are unavailable. Direct governmental lending agencies are competitive to a lesser extent than the private financial institutions.

Philadelphia, the fourth largest metropolitan area in the nation, has a relatively low concentration of banking resources. Out of 34 standard metropolitan statistical areas with limited branching, the Philadelphia area ranks only 25th in terms of concentration based on the five largest banks in each area.

Of the 84 commercial banks located in the Philadelphia area, only three have total deposits of more than one billion dollars. The largest of these is the First Pennsylvania Banking and Trust Company, which has total deposits of \$1.459 billion and operates 45 branch offices. The second is the Philadelphia

National Bank, with deposits of \$1.292 billion and 36 offices. Girard Trust Bank, with \$1.013 billion in deposits and 50 branches, is third. None of these banks, which rank 19th, 26th and 37th, respectively, among the nation's commercial banks, are near the size of the Mellon National Bank of Pittsburgh.

The charter bank, with IPC deposits of \$260 million, was originally organized in 1864 as the Central National Bank. It acquired its present title in 1930 when Central National Bank merged with Penn National Bank. During the last five years, however, it has had no mergers. The charter bank presently operates twenty-four offices throughout Philadelphia, Bucks, Montgomery, and Delaware Counties. Central Penn has specialized in medium-sized local business loans and has built up over the years a strong and experienced commercial loan department. The bank needs additional capital to support its existing volume of business. Its head office is inadequate and congested. The renovated quarters of the resulting bank and its new accounting center will alleviate this problem.

The merging bank, with IPC deposits of \$471 million, was originally incorporated in 1922 as Provident Trust Company of Philadelphia to take over the banking and trust business of Provident Life and Trust Company; it became a national bank in 1964. The Provident National Bank is presently operating thirty-three offices throughout Philadelphia, Bucks, Montgomery, and Delaware Counties. Besides being a strongly capitalized bank, Provident has one of the largest trust departments in the Philadelphia area, as well as an established international division, and a specialized construction loan department. Among the remaining area banks, there are ten with resources

of \$100 million and over, which assure a satisfactory range of services to the medium-size customer.

Commercial banks compete not only with each other, but with many other types of savings and financial institutions strongly represented in the area. There are four mutual savings banks with head offices in Philadelphia operating more than 50 branches in the metropolitan area and having withdrawable balances of \$2.861 billion. These institutions are well managed, with records of sound operation dating from 111 to 149 years. The Philadelphia Savings Fund Society, the major savings bank, is the largest bank in Eastern Pennsylvania. These mutuals have paid a high rate of interest on regular savings accounts, which has contributed much to the amazing growth rate of their savings deposits of 51.9% over 1960.

Insured savings and loan associations, with \$2.555 billion in total assets, compete vigorously in the metropolitan area for personal savings and also solicit corporate funds. Emphasizing the savings function, the high dividend rate, federal insurance and, frequently, valuable premiums on new accounts, they successfully compete with mutual savings and large commercial banks for savings and mortgage loans. There is no area in the city where the commercial banks are not in direct competition with a nearby office of a savings and loan association. Moreover, many out-of-state savings and loan associations from as far away as California solicit deposits by mail, emphasizing the high interest rates offered. First Pennsylvania cited the drain of deposits resulting from such out-of-state competition as a principal reason for its recent decision to offer five-year, 4½% savings bonds, now also offered by most other Philadelphia banks. It is significant that savings deposits and mortgage loans of the eight largest Philadelphia

commercial banks amounted in the aggregate to only 16.94% and 6.99%, respectively, of the combined totals for such banks, the four mutual savings banks, and the insured savings and loan associations in the area as of December 31, 1964.

There are more than 300 insurance companies with offices in the city. The seven largest insurance companies with headquarters in Philadelphia are: Pennsylvania Mutual Life, with assets of \$2,068,973,000, mortgage loans of \$625,256,000, and policy loans of \$140,358,000; Provident Mutual Life, with assets of \$989,936,000, mortgage loans of \$328,387,000 and policy loans of \$58,626,000; Fidelity Mutual Life, with assets of \$442,770,000, mortgage loans of \$146,061,000, and policy loans of \$30,216,000; Philadelphia Life, with assets of \$109,355,000, mortgage loans of \$36,822,000 and policy loans of \$6,646,000; Presbyterian Ministers' Fund, with assets of \$95,760,000, mortgage loans of \$19,098,000 and policy loans of \$6,428,000; Home Life, with assets of \$95,338,000, mortgage loans of \$45,612,000 and policy loans of \$3,039,000; and Life Insurance Company of North America, with assets of \$44,716,000, mortgage loans of \$7,660,000 and policy loans of \$1,354,000. The three largest companies have been very active in private placement financing; they are joined in competition for local financing by all of the leading national life insurance companies and many Canadian companies as well. All of these and many smaller companies actively solicit real estate mortgages for investment. Some companies maintain their own mortgage offices in Philadelphia while others rely upon local mortgage service companies for their supply.

There are reported to be 285 credit unions in the urban Philadelphia area. There are no statistics on the number of credit unions in the entire metro-

politan area. Credit unions make the most of their competitive position, emphasizing mutual ownership, low interest rates on loans, in some cases the payroll deduction method of loan repayment and savings, and convenience of access to credit union facilities.

There are about 100 sales finance companies and about 300 small loan and consumer discount companies operating within the service area of the resulting bank. Many of these companies have large branch office systems. Beneficial Finance Companies have 14 offices, Household Finance Corporations have 26 offices, and Ritter Finance Companies have 18 offices. All of these companies compete aggressively with commercial banks for automobile, home modernization, and personal loan financing.

There are 15 factoring companies with offices in the city of Philadelphia. These companies compete in the accounts receivable finance market.

The consummation of the proposed merger will not result in the elimination of a significant amount of competition between the applicant banks. Provident and Central-Penn face branch office competition from the offices of the largest Philadelphia banks rather than from each other, except in the immediate Philadelphia downtown area. For this reason, a minimal number of common accounts exists between them. There are only 28 mutual customers out of a combined total of 3,277 savings accounts with balances of \$10,000 or more; nine mutual holders of the new $4\frac{1}{2}\%$ savings certificates of each bank out of a total of 2,512 accounts; eight mutual depositors out of 444 with certificates of deposit; and four mutual customers with open time deposit balances in excess of \$10,000 out of 281 accounts. A comparison of all regular checking accounts with balances of \$10,000 or more in each bank disclosed only 139 mutual ac-

the number of credit unions in the entire metro-

counts out of 6,614, and a comparison of loan balances of \$10,000 or more for each bank disclosed only 32 mutual borrowers out of 3,287. As to consumer credit customers of the two banks, due to the complementary branch systems and differences in the sources of dealer paper, it is doubtful that more than an insignificant overlap is involved.

The following analysis of the dispersion of the branch offices of the applicant banks clearly reveals the limited extent to which the banks compete for the deposits of the small retail customers. As previously noted, Pennsylvania law permits branching into the counties contiguous to the home county, and while both banks operate branch offices in Philadelphia and at least one office in each of the three contiguous counties, the locations of these offices are such that, except in the downtown area, they are not in significant competition with each other. Of the twenty-four offices Central Penn presently operates throughout this four-county area, thirteen are located in Philadelphia: four downtown, three to the north of the downtown area, four to the west, and two to the south. Provident is presently operating thirty-three offices in the four-county area, twenty of which are located in Philadelphia: five downtown, one immediately outside of the downtown area, eleven north of the downtown area, two west, and one south. In Delaware County, Provident is well represented with six offices, while Central Penn has but one. On the other hand, Central Penn has eight offices in Lower Bucks County, while Provident has two offices in Upper Bucks County. In Montgomery County, Provident has five offices, two in the southwest section, two in the northeast section and one in the west-central part, while Central Penn has only two offices in the southeastern section of the county. Subsequent discussion will

show that the participating banks' branches in these last three counties do not compete with each other because of their locations. These branches, in fact, will complement one another when the merger is consummated.

In downtown Philadelphia, the main office of Central-Penn is located at the corner of Broad and Walnut Streets, only a block away from the main office of Provident at the corner of Broad and Chestnut Streets. Within .4 of a mile of Provident's office are eight commercial banks, some with several offices; two savings banks; one savings and loan association; ten finance and small loan companies; four credit unions; and twelve insurance companies. Central-Penn's office is within .3 of a mile of eight commercial banks, one savings bank, six savings and loan associations, twenty-six finance and small loan companies, two credit unions, and two insurance companies.

Competition also exists among the branch offices of the two banks located at 21 South 12th Street, 12th and Chestnut Streets, and Market and Juniper Streets. These offices are in the same area. However, within .3 of a mile from Provident's office at 21 South 12th Street are five commercial banks, three savings banks, two savings and loan associations, ten finance and small loan companies, and four credit unions. Central-Penn's office at 12th and Chestnut Streets is within .5 of a mile of four commercial banks, two savings banks, six savings and loan associations, sixteen finance and small loan companies, three credit unions, and one insurance company. Within .4 of a mile from Central-Penn's office at Juniper and Market Streets are three commercial banks, a savings bank, three savings and loan associations, six finance and small loan companies, and two insurance companies.

No significant competition exists among any of the other branch offices of the applicant banks, although a few of these are relatively close to each other.

Offices of the two applicant banks located in downtown Philadelphia at 17th and Arch Streets, and at 17th and Chestnut Streets are separated by three long blocks traversing Penn Center, an office redevelopment area. Within .3 of a mile from Provident's office are nine commercial banks, three savings banks, twelve savings and loan associations, five finance and small loan companies, and one credit union. Central-Penn's office is within .3 of a mile of six commercial banks, three savings banks, one savings and loan association, four finance and small loan companies, three credit unions, and two insurance companies.

Other branch offices of the applicants in downtown Philadelphia, which are located in the same area, are those at 7th and Chestnut Streets and at 4th and Chestnut Streets. All the major banks are represented in this section. Within .3 of a mile from Central-Penn's office located at 7th and Chestnut Streets are three commercial banks, a savings bank, three savings and loan associations, three finance and small loan companies, two credit unions, and nine insurance companies. Provident's office located at 4th and Chestnut Streets is within .3 of a mile of seven commercial banks, three savings and loan associations, one finance and small loan company, two credit unions, and one insurance company.

The office of Central-Penn, located at 2nd and Pine Streets, is seven blocks away, and separated by the Independence National Historical Park, from Provident's office located at 4th and Chestnut Streets. No competition exists between the two offices because of the distance, difference in neighborhood and the barrier created by the park. The draw area of the 2nd

and Pine office is principally South Philadelphia rather than downtown Philadelphia. Within a mile from Central-Penn's office are three commercial banks, a savings and loan association, and one finance and small loan company.

In heavily populated West Philadelphia, Central-Penn's office at 58th Street and Baltimore Avenue and Provident's office at 19 South 52nd Street are 1.5 miles apart and thus have separate service areas. Within one mile of Central-Penn's office are three commercial banks, one savings and loan association, and two finance and small loan companies. Provident's office is within 1.3 miles of three commercial banks, two savings banks, five savings and loan associations, seven finance and small loan companies, four credit unions, and one insurance company.

In North Philadelphia, the office of Central-Penn at Broad Street and Glenwood Avenue and the office of Provident at 3314 Germantown Avenue are .7 of a mile apart and are separated by the main tracks of the Pennsylvania Railroad and by Allegheny Avenue, a major thoroughfare. Central-Penn's office serves the area south of these boundaries and is within .6 of a mile of two commercial banks, a savings bank, three savings and loan associations, four finance and small loan companies, and five credit unions. Provident's office, serving the business and population north of Allegheny Avenue and the railroad, is within .6 of a mile of four offices of two commercial banks, a savings bank, three savings and loan associations, and two finance and small loan companies.

Central-Penn's office at 5th and Wyoming Avenue and Provident's office at Broad and Loudon Streets are a mile apart and serve different areas which are separated by the Northeast Expressway. The Wyoming office of Central-Penn does not serve the area

along Broad Street which is within the service area of the Broad and Loudon office of Provident. Likewise, the Provident's office does not serve the business along 5th Street south of Wyoming Avenue. Central Penn's office is within one mile of three commercial banks, five savings and loan associations, five finance and small loan companies, and one credit union. Provident's office is less than .5 of a mile from one commercial bank, one savings bank, two savings and loan associations, four finance and small loan companies, and one credit union.

Central-Penn's office at 7325 Stenton Avenue and Provident's office at 78th Street and Ogontz Avenue are 1.75 miles apart. The road pattern of the area obviates competition between them. Central-Penn's office is within 1.5 miles of three commercial banks, two savings banks, and two savings and loan associations. Provident's office is within one mile of nine commercial banks, three savings banks, five savings and loan associations, one finance and small loan company, one credit union, and two insurance companies.

In Delaware County, the office of Central-Penn located at 301 Baltimore Pike, Springfield, and the office of Provident at Hart Lane and Saxer Avenue, Springfield, are approximately 1.2 miles apart. Within one mile from Central-Penn's office are four commercial banks, two savings and loan associations, two finance and small loan companies, and a savings bank. Provident's Springfield office is within 2.2 miles of six commercial banks, two savings banks, two savings and loan associations, four finance and small loan companies, and two credit unions.

In Montgomery County, the offices of Central-Penn located at King of Prussia Industrial Park, Upper Merion Township, and the office of Provident at King of Prussia Plaza, Upper Merion Township, are 1.2

miles apart. They are separated by the Pennsylvania Turnpike. Because of limited overpasses and underpasses, these offices are about 2.8 miles apart by either the eastern or western route. Driving this distance during rush hours can take from fifteen minutes to half an hour. Central-Penn's Industrial Park office cannot adequately serve the population drawn to the stores in the shopping center. Provident's office is within 1.75 miles of four commercial banks and two savings banks, and within .5 of a mile of a savings and loan association, and two finance and small loan companies.

In Bucks County there is no competition between the branches of the participating banks. While Provident has two offices in the upper part of the county and Central-Penn has eight in the lower part of the county, the closest offices are 18 road miles apart.

Thus it is evident that the overall competition among the branches of Provident and Central-Penn is not significant. It is pertinent, moreover, to note the kind of branching systems of other Philadelphia banks with which the merging banks must compete. Girard Trust, for example, presently has a total of 50 offices, which cover all sections of Philadelphia and its suburbs. According to Girard's 1965 annual report, "Close to two-thirds of all our deposits are now serviced at branch locations." It thus appears that Girard is handling a higher percentage of its deposits at its branches than is either Central-Penn or Provident.

Quite apart from a narrow consideration of the branching systems of the merging banks, the competitive structure is properly evaluated only when all the financial institutions which are competing for the sav-

ings and deposit dollars and the business, real estate, and personal loans are taken into consideration. It has already been shown that all of these financial institutions represent an impressive multiplicity of competitive units and resources. While figures are not available for the resources of all competing financial institutions, the figures that are available indicate that the premerger relative size of Provident is 3.93% of total financial institution resources and of Central-Penn is 2.09%. The post-merger relative size of the resulting bank will be 6.02%.² This post-merger relative size, while overstated because of lack of data from some competitors, will not cause, by any reasonable measure, a significant lessening of competition in the resulting bank's market.

This merger, on the contrary, will stimulate competition among the largest banks in the market area. As the Federal Reserve Board said in its decision on the Fidelity Philadelphia-Liberty Real Estate Bank merger in 1963, "the climate of competition would be stimulated by the increased capacity of a large scale bank, and the range of choices available to customers who require services which can only be rendered by a larger bank would be increased."

We have shown that the competition which would be eliminated by this merger is minuscule. It is now pertinent to examine the procompetitive effect of the merger on the convenience and needs of the Philadelphia market.

² These relative size figures are based on the aggregate resources figures of the following financial institutions: mutual savings banks, \$2.861 billion; savings and loan associations, \$2.555 billion; insurance companies, \$3.847 billion; and commercial banks, \$8.495 billion. Provident has total resources of \$698.697 million and Central-Penn has resources of \$370.379 million.

The increased lending capacity of the resulting bank will benefit large banking customers through the creation of an additional source of very large loans. The close relationship between competition and convenience and needs of the community is thus demonstrated. The needs of these large customers are better met through the injection of added competition in the large loan market.

The combining of the computer systems of the applicant banks will yield a more efficient data processing operation. Provident, at present, has new data processing equipment on order to replace its present obsolescent equipment. These new computers will adequately take care of business in the foreseeable future. Central-Penn's computers have no backup capacity; this merger will solve the problem of this vulnerability. A direct access system, now being put into service by Central-Penn, will enable the resulting bank to provide direct access to its computers from customers sooner than Provident could on its own. With its greater financial resources and larger operations to assume acquisition and start-up costs, the resulting bank will be better able to provide the public with the latest advances in data processing services.

Use of the recently renovated Provident main office by the resulting bank will not only increase its efficiency but will improve customer service. Further, it will eliminate the necessity of a substantial outlay by Central-Penn to obtain adequate headquarters. To do so, according to Central-Penn's preliminary estimate, its annual occupancy costs would increase \$250,000.

Since it has been shown that the branch systems of the merging banks are complementary, that an adequate number of alternative sources of financial

services exist in the Philadelphia area and that competition among the large financial institutions will be stimulated, it is concluded that this merger, rather than having an overall adverse effect on competition, will have a favorable effect. Further, the increased ability of the resulting bank to serve the convenience and needs of the Philadelphia area by increased efficiency, by a greater lending capacity, through more adequate banking quarters, and by a generally improved quality of banking services makes this merger desirable. We would be hindering the economic growth of Philadelphia if we failed to give our approval to this merger application.

Pursuant to the 1966 Amendment to the Bank Merger Act, we find that the merger of Provident National Bank and Central-Penn National Bank clearly conforms to the statutory criteria and is in the public interest. The application is, therefore, approved.

JAMES J. SAXON,
Comptroller of the Currency.

DATED:

APPENDIX D

**United States District Court, Eastern District of
Pennsylvania**

60-111-1003, Civil Action No. 40032,

Filed: Apr. 1, 1966

UNITED STATES OF AMERICA, PLAINTIFF

v.

**PROVIDENT NATIONAL BANK, AND CENTRAL-PENN NA-
TIONAL BANK OF PHILADELPHIA, DEFENDANTS**

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the above-named defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain continued violations by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended by the Act of Congress of December 29, 1950, c. 1184, 64 Stat. 1125.

No significant competition exists among any of the other branch offices of the applicant banks, although a few of these are relatively close to each other.

Offices of the two applicant banks located in downtown Philadelphia at 17th and Arch Streets, and at 17th and Chestnut Streets are separated by three long blocks traversing Penn Center, an office redevelopment area. Within .3 of a mile from Provident's office are nine commercial banks, three savings banks, twelve savings and loan associations, five finance and small loan companies; and one credit union. Central-Penn's office is within .3 of a mile of six commercial banks, three savings banks, one savings and loan association, four finance and small loan companies, three credit unions, and two insurance companies.

Other branch offices of the applicants in downtown Philadelphia, which are located in the same area, are those at 7th and Chestnut Streets and at 4th and Chestnut Streets. All the major banks are represented in this section. Within .3 of a mile from Central-Penn's office located at 7th and Chestnut Streets are three commercial banks, a savings bank, three savings and loan associations, three finance and small loan companies, two credit unions, and nine insurance companies. Provident's office located at 4th and Chestnut Streets is within .3 of a mile of seven commercial banks, three savings and loan associations, one finance and small loan company, two credit unions, and one insurance company.

The office of Central-Penn, located at 2nd and Pine Streets, is seven blocks away, and separated by the Independence National Historical Park, from Provident's office located at 4th and Chestnut Streets. No competition exists between the two offices because of the distance, difference in neighborhood and the barrier created by the park. The draw area of the 2nd

and Pine office is principally South Philadelphia rather than downtown Philadelphia. Within a mile from Central-Penn's office are three commercial banks, a savings and loan association, and one finance and small loan company.

In heavily populated West Philadelphia, Central-Penn's office at 58th Street and Baltimore Avenue and Provident's office at 19 South 52nd Street are 1.5 miles apart and thus have separate service areas. Within one mile of Central-Penn's office are three commercial banks, one savings and loan association, and two finance and small loan companies. Provident's office is within 1.3 miles of three commercial banks, two savings banks, five savings and loan associations, seven finance and small loan companies, four credit unions, and one insurance company.

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In Delaware County, the office of Central-Penn located at 301 Baltimore Pike, Springfield, and the office of Provident at Hart Lane and Saxer Avenue, Springfield, are approximately 1.2 miles apart. Within one mile from Central-Penn's office are four commercial banks, two savings and loan associations, two finance and small loan companies, and a savings bank. Provident's Springfield office is within 2.2 miles of six commercial banks, two savings banks, two savings and loan associations, four finance and small loan companies, and two credit unions.

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ings and deposit dollars and the business, real estate, and personal loans are taken into consideration. It has already been shown that all of these financial institutions represent an impressive multiplicity of competitive units and resources. While figures are not available for the resources of all competing financial institutions, the figures that are available indicate that the premerger relative size of Provident is 3.93% of total financial institution resources and of Central-Penn is 2.09%. The post-merger relative size of the resulting bank will be 6.02%.^{*} This post-merger relative size, while overstated because of lack of data from some competitors, will not cause, by any reasonable measure, a significant lessening of competition in the resulting bank's market.

This merger, on the contrary, will stimulate competition among the largest banks in the market area. As the Federal Reserve Board said in its decision on the Fidelity Philadelphia-Liberty Real Estate Bank merger in 1963, "the climate of competition would be stimulated by the increased capacity of a large scale bank, and the range of choices available to customers who require services which can only be rendered by a larger bank would be increased."

We have shown that the competition which would be eliminated by this merger is minuscule. It is now pertinent to examine the procompetitive effect of the merger on the convenience and needs of the Philadelphia market.

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services exist in the Philadelphia area and that competition among the large financial institutions will be stimulated, it is concluded that this merger, rather than having an overall adverse effect on competition, will have a favorable effect. Further, the increased ability of the resulting bank to serve the convenience and needs of the Philadelphia area by increased efficiency, by a greater lending capacity, through more adequate banking quarters, and by a generally improved quality of banking services makes this merger desirable. We would be hindering the economic growth of Philadelphia if we failed to give our approval to this merger application.

Pursuant to the 1966 Amendment to the Bank Merger Act, we find that the merger of Provident National Bank and Central-Penn National Bank clearly conforms to the statutory criteria and is in the public interest. The application is, therefore, approved.

JAMES J. SAXON,
Comptroller of the Currency.

DATED:

APPENDIX D

**United States District Court, Eastern District of
Pennsylvania**

60-111-1003, Civil Action No. 40032,

Filed: Apr. 1, 1966

UNITED STATES OF AMERICA, PLAINTIFF

v.

**PROVIDENT NATIONAL BANK, AND CENTRAL-PENN NA-
TIONAL BANK OF PHILADELPHIA, DEFENDANTS**

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I**JURISDICTION AND VENUE**

1. This complaint is filed and this action is instituted against the above-named defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain continued violations by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended by the Act of Congress of December 29, 1950, c. 1184, 64 Stat. 1125.

2. Each of the defendants has its principal place of business, transacts business, and is found within the Eastern District of Pennsylvania.

II

THE DEFENDANTS

3. Provident National Bank, hereinafter referred to as "Provident," is made a defendant herein. It is a banking association organized under the laws of the United States, having its principal place of business at Philadelphia, Pennsylvania.

4. Central-Penn National Bank of Philadelphia, hereinafter referred to as "Central-Penn," is made a defendant herein. It is a banking association organized under the laws of the United States, having its principal place of business at Philadelphia, Pennsylvania.

III

TRADE AND COMMERCE

5. Commercial banks fill an essential and unique role in the nation's economy. Most money payments are made through the device of demand deposits, a function unique to commercial banks. Through the making of loans to individual and business borrowers commercial banks supply a significant part of the credit requirements of our economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments; the acceptance of bills of exchange; the issuance of letters of credit; the sale of cashiers' checks, and drafts on correspondent banks; the purchase or sale of securities for customers; the

sale of foreign exchange; and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

6. Commercial banks, because of the importance of bank credit to business borrowers and their close relationships with many such borrowers, and because of their holdings of stock in trust accounts, have an important influence on competition in all branches of industry and commerce served by the banking system.

7. The history of commercial banking in the four-county area of Philadelphia, Bucks, Delaware and Montgomery counties has been one of consolidations, mergers, and acquisitions. This has resulted in a heavy concentration of the business of commercial banking within a relatively few banks. As of June 30, 1965 the five largest commercial banks within the aforementioned four-county area controlled approximately 73% of the total assets, 74% of the total loans, 71% of the total deposits of individuals, partnerships and corporations (IPC deposits), 72% of the total IPC demand deposits and 54% of all banking offices of 37 commercial banks doing business in the area.

8. As of June 30, 1965, Provident, the fifth largest commercial bank in the four-county area, controlled approximately \$683 million (9%) of the total assets, \$398 million (9%) of the total loans, \$475 million (9%) of the total IPC deposits, \$326 million (10%) of the total IPC demand deposits and 32 (9%) of the banking offices of the 37 banks doing business in the four-county area.

9. As of June 30, 1965, Central-Penn, the sixth largest commercial bank in the four-county area, controlled approximately \$369 million (5%) of the total assets, \$210 million (5%) of the total loans, \$263 million (5%) of the total IPC deposits, \$170 million

(5%) of the total IPC demand deposits and 24 (6%) of the banking offices of the 37 banks doing business in the four-county area.

10. Both Provident and Central-Penn have made numerous acquisitions which have contributed to the present degree of commercial banking concentration in the four-county area. Provident is the product of seven such mergers or consolidations since 1947. Central-Penn has acquired six banks since 1949.

11. After the proposed merger of Provident and Central-Penn, the resulting bank would become the fourth largest bank in the area. It would control approximately 14% of the total assets, 14% of the total loans, 14% of the total IPC deposits, 15% of the total IPC demand deposits and 15% of the banking offices of the 36 banks doing business in the four-county area.

12. After the proposed merger, the five largest banks in the area would control approximately 78% of the total assets, 79% of the total loans, 76% of the total IPC deposits, 77% of the total IPC demand deposits and 63% of the banking offices of 36 banks doing business in the area.

13. Provident and Central-Penn compete with each other and with other commercial banks in the four-county area in the performing of commercial banking functions, as described in paragraph 5 above.

14. Customers of Provident and Central-Penn have regularly utilized interstate communications, including the mails, telephone and telegraph, to effect deposits, apply for and obtain loans and obtain other services made available by these banks. The banks have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct banking business with customers, and with other

banks located in states other than the state in which they are located. The banks have also received a significant amount of deposits from states other than the state in which they are located, and have made a significant amount of loans to customers in such other states. Provident and Central-Penn are engaged in interstate commerce.

IV

OFFENSE CHARGED

15. Defendants Provident and Central-Penn have entered into an agreement to merge Provident into Central-Penn, under the Charter and Articles of Association of Central-Penn. The agreement was approved by their respective boards of directors on or about November 10, 1965.

16. The effect of the merger of Provident and Central-Penn, pursuant to the agreement described in paragraph 15 above, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act.

17. The offense alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

V

EFFECTS

18. The aforesaid offense charged in this complaint, if continued and carried out, will have, among others, the following effects:

- (a) competition between the defendants will be permanently eliminated;
- (b) competition, generally in commercial banking in the four-county area of Philadel-

phia, Bucks, Delaware and Montgomery counties will be substantially and unreasonably lessened;

(c) concentration in commercial banking in the four-county area will be substantially and unreasonably increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid agreement between defendants Provident and Central-Penn be adjudged and decreed to be unlawful, in violation of Section 7 of the Clayton Act.

2. That defendants Provident and Central-Penn and all persons acting on their behalf be enjoined from carrying out the agreement of merger or any similar plan or agreement the effect of which would be to merge or consolidate said defendants.

3. That plaintiff have such other and further relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this suit.

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Attorney, Department of Justice.

DREW J. T. O'KEEFE,

United States Attorney.

AFFIDAVIT

**DISTRICT OF COLUMBIA,
WASHINGTON, D.C., ss:**

JOHN W. NEVILLE, being duly sworn, deposes and says that he is an attorney employed by the Antitrust Division of the Department of Justice; that he has been actively engaged in the preparation of this action; that he has read the foregoing Complaint and knows the contents and is familiar with the subject matter thereof; that he is informed and believes that the allegations of fact contained therein are true; and that the sources of his information are written statements made by the defendants in their Application to the Comptroller of the Currency for approval to merge and information obtained from recognized trade sources.

JOHN W. NEVILLE,

Attorney, Department of Justice.

Subscribed and sworn to before me this 31 day of
March, 1966.

SARA B. McGRANM,

Notary Public.

My Commission Expires May 1, 1966.